

## **SEPARATION AND REPAYMENT AGREEMENT AND GENERAL RELEASE**

### **1. PARTIES**

The parties to this Separation Agreement and General Release (the "AGREEMENT") are Rickey S. Manbahal ("MANBAHAL") and the City of Hawthorne, its employees, officers, agent, directors, and elected officials (the "CITY") (collectively, the "PARTIES").

### **2. RECITALS**

2.1 MANBAHAL has been employed by the CITY since June 16, 2014, and currently holds the position of Director of Finance ("EMPLOYMENT").

2.2 Both MANBAHAL and the CITY desire to resolve issues of any kind between them, including, but not limited to, all issues of every kind or nature arising out of or related to MANBAHAL'S EMPLOYMENT and all other disputes of every kind or nature arising out of or related to MANBAHAL'S EMPLOYMENT with the CITY, and MANBAHAL hereby desires to settle, release, discharge, and terminate each, every, any, and all claims, demands, controversies, causes of action, damages, rights, and liabilities whatsoever of the CITY, if any, against MANBAHAL. Neither MANBAHAL nor the CITY admits any wrongdoing, and this AGREEMENT is in no way an admission of liability by any party or that any allegations made by any party against another party have merit.

### **3. COVENANTS**

3.1 In exchange for the promises and releases set forth herein, MANBAHAL will, at the same time this AGREEMENT is signed by him, submit a letter of resignation from his EMPLOYMENT with the CITY for personal reasons. The CITY will accept his resignation effective May 25, 2018 ("RESIGNATION"), in lieu of termination, and that letter of resignation will constitute the official reason for the separation of MANBAHAL'S EMPLOYMENT with the CITY.

3.2 In further exchange for the promises and releases set forth herein, specifically with regards to any civil claims the CITY may have against MANBAHAL, MANBAHAL agrees that he will execute and comply with the terms and conditions of the promissory note attached hereto and incorporated herein as Exhibit A ("PROMISSORY NOTE"). Upon satisfaction of the terms and conditions of the PROMISSORY NOTE as provided therein, the CITY will release, acquit, and forever discharge MANBAHAL and his heirs, representatives, successors, and assigns, from any and all civil claims, charges, complaints, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, which relate to or arise out of any act,

omission, occurrence, condition, event, transaction, or thing relating to the PROMISSORY NOTE. The PARTIES agree that this release is contingent upon MANBAHAL's promise to execute and comply with the terms and conditions of the PROMISSORY NOTE. The CITY reserves the right to pursue claims against MANBAHAL which relate to or arise out of the PROMISSORY NOTE in the event that MANBAHAL fails to execute or comply with the terms and conditions of the PROMISSORY NOTE.

3.3 MANBAHAL further understands, agrees, and covenants that his RESIGNATION shall be accepted by the CITY and be binding and irrevocable as of the EFFECTIVE DATE, as such EFFECTIVE DATE is defined in Paragraph 4g of this AGREEMENT, that the CITY is acting in reliance upon the RESIGNATION, and that the CITY shall be under no obligation or duty to consider, accept, or in any way allow any attempt by MANBAHAL to rescind the RESIGNATION. MANBAHAL further understands, agrees, promises and covenants that the releases given in Paragraphs 3.2, 3.4, and 4 of this AGREEMENT are supported by separate consideration from that supporting the RESIGNATION, and any attempt to rescind the RESIGNATION, whether such attempt is successful or unsuccessful, shall have no effect on the releases given by this AGREEMENT, which shall remain effective and binding against MANBAHAL in conformity herewith.

3.4 In addition, MANBAHAL hereby, and for his heirs, representatives, successors, and assigns, releases, acquits, and forever discharges the CITY, its past and present employees, agents, officers, representatives, insurers, attorneys, predecessors, successors, and assigns, and all persons acting by, through, under, or in concert with any of them, and each of them, from any and all claims, charges, complaints, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected ("MANBAHAL's CLAIMS"), which MANBAHAL now has or may acquire in the future, which relate to or arise out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred, or was in effect at any time from the beginning of time up to and including the date MANBAHAL executes this AGREEMENT, including but not limited to MANBAHAL's CLAIMS arising under federal, state, or local constitutions, statutes, rules, regulations, or common law. MANBAHAL expressly acknowledges that MANBAHAL's CLAIMS that are forever barred by this AGREEMENT specifically include, but are not limited to, claims set forth in or related to his EMPLOYMENT and the RESIGNATION, and all other disputes of every kind or nature arising out of or related to MANBAHAL's EMPLOYMENT with the CITY, and MANBAHAL hereby desires to settle, release, discharge, and terminate each, every, any, and all claims, demands, controversies, causes of action, damages, rights, and liabilities whatsoever of the CITY, if any, to MANBAHAL, including but not limited to attorney's fees, medical expenses, physical sickness and physical injuries, and claims based upon any alleged breach of employment contract, any demand for wages, overtime, retirement or other benefits, including, but not limited to claims arising under the California Public Employee Retirement Law, any alleged breach of any duty arising

out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination, harassment, retaliation, failure to accommodate, or unlawful discriminatory act, any alleged failure to pay equal wages based upon age, race, color, sex, gender, pregnancy, sexual orientation, handicap or disability, national origin, or any other protected category or characteristic, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, gender, pregnancy, religion, sexual orientation, handicap or disability, national origin, or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Meyers-Millias-Brown Act, the Healthy Workplaces, Healthy Families Act of 2014, and any other federal, state, or local civil rights, employment discrimination, employee rights, privacy, or wiretapping/eavesdropping statute, rule, policy, or regulation.

3.5 MANBAHAL further understands and agrees that he has received all unpaid wages, due to him as of the EFFECTIVE DATE in the ordinary course of his employment. In addition, in accordance with Section 6.4 of the applicable Memorandum of Understanding between the City of Hawthorne and the Hawthorne Executive Group and applicable CITY policies, the CITY shall pay out MANBAHAL the value of MANBAHAL's unused and accrued vacation leave balances at his regular rate of pay as of the EFFECTIVE DATE.

**4. SPECIFIC ACKNOWLEDGEMENT OF WAIVER OF CLAIMS UNDER THE ADEA AND OWBPA**

The Age Discrimination in Employment Act of 1967 ("ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty or older. The Older Workers Benefit Protection Act ("OWBPA", 29 U.S.C. §§ 626, *et. seq.*, Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this AGREEMENT, MANBAHAL acknowledges that he is knowingly and voluntarily, for just consideration in addition to anything of value to which MANBAHAL was already entitled, waiving and releasing any rights he may have under the ADEA and/or OWBPA. MANBAHAL further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) this waiver/release is written in a manner understood by MANBAHAL;
- (b) MANBAHAL is aware of and has been advised of his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws;

(c) MANBAHAL is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT, and the waiver and release of any rights he may have under the ADEA, the OWBPA, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;

(d) the waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the EFFECTIVE DATE of this AGREEMENT;

(e) MANBAHAL has been advised by this writing that he should consult with an attorney prior to executing this AGREEMENT;

(f) MANBAHAL is aware of his right to discuss this waiver and release with legal counsel of choice and he does not need any additional time within which to review and consider this AGREEMENT or engage in further discussions with said legal counsel;

(g) MANBAHAL has seven days following the parties' full and complete execution of this AGREEMENT to revoke the AGREEMENT (the date of expiration of this seven-day period shall be referred to as the "EFFECTIVE DATE"). The revocation must be in writing and received by the CITY to the address set forth in Section 8.12, within the revocation period; and

(h) this AGREEMENT shall not be effective until the EFFECTIVE DATE.

## **5. UNKNOWN CLAIMS**

MANBAHAL represents that it is his intention in executing this document that this AGREEMENT shall be effective as a bar to each and every claim, demand, suit, action, cause of action, debt, attorneys' fees and costs, and the claims hereinabove specified, whether known or unknown, suspected or unsuspected; and in furtherance of this intention MANBAHAL HEREBY EXPRESSLY WAIVES ALL RIGHTS AND BENEFITS CONFERRED UPON HIM BY THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, WHICH MANBAHAL UNDERSTANDS PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Notwithstanding Section 1542 of the Civil Code of California, MANBAHAL expressly consents that this AGREEMENT shall be given full force and effect according to each and all of its express terms and provisions, including as well those relating to unknown and unspecified claims, demands, suits, actions, causes of action and debts, if any, and those relating to any other claims, demands, suits, actions, causes of action and debts hereinabove specified. This release and waiver includes, among others, claims based on age discrimination arising under the federal Age Discrimination in Employment Act and applicable state law, and attorneys' fees and costs.

**6. WAIVER OF ADDITIONAL CLAIMS**

MANBAHAL hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5, above.

**7. REPRESENTATIONS AND WARRANTIES**

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1 Advice of Counsel: Each party is aware of his or its right to receive or has received independent legal advice from its attorney(s) with respect to the advisability of making the agreements provided for herein, with respect to the advisability of executing this AGREEMENT, and with respect to the meaning of California Civil Code § 1542.

7.2 No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission, or promise of any other party (or of any officer, agent, employee, representative, or attorney of or for any party) in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT. Each term of this AGREEMENT is contractual and not merely a recital.

7.3 Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4 Comprehension and Authority: Each party or responsible officer thereof has read this AGREEMENT and understands the contents hereof. Any of the employees executing this AGREEMENT on behalf of the CITY are empowered to do so and hereby bind the CITY.

7.5 Mistake Waived: In entering into this AGREEMENT and the settlement provided for herein, each party assumes the risk of any misrepresentation, concealment, or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be and is final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.6 Later Discovery: Each party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties to fully, finally, and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or have previously existed between MANBAHAL and the CITY. In furtherance of such intention, the releases given by MANBAHAL here shall be and remain in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.7 Ownership of Claims: MANBAHAL represents and warrants as a material term of this AGREEMENT that he has not heretofore assigned, transferred, released, or granted, or purported to assign, transfer, release, or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, MANBAHAL further warrants and represents that none of the CLAIMS released by them hereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.8 Future Cooperation: The parties will execute all such further and additional documents as shall be reasonable, convenient, necessary, or desirable to carry out the provisions of this AGREEMENT.

## 8. GENERAL PROVISIONS

8.1 No Admission: Nothing contained herein shall be construed as an admission by the parties of any liability of any kind. Each of the parties hereto denies any liability in connection with any claim and intends hereby solely to avoid litigation and buy its peace.

8.2 Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3 Full Integration: This AGREEMENT, including Exhibit A, is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties.

8.4 Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties, their respective agents, employees, representatives, officers, attorneys, insurers, assigns, heirs, and successors in interest.

8.5 Attorneys' Fees: In the event of litigation asserting a breach of this AGREEMENT, the prevailing party or parties shall be entitled to costs, including reasonable attorneys' fees.

8.6 Joint Drafting: Each party has cooperated in the drafting and preparation of this AGREEMENT and no party shall be deemed to have been the drafter of this AGREEMENT. Hence, this AGREEMENT shall be construed within its fair meaning, and not against any party.

8.7 Valid Consideration: Each party acknowledges and agrees that this AGREEMENT is supported by substantial and valid consideration, and that the waivers and releases set forth herein constitute good and valuable consideration, the sufficiency of which is expressly acknowledged. The PARTIES agree and acknowledge that they have read and understand this agreement, are entering into it voluntarily, and intend to be bound by and comply with its terms.

8.8 Severability: In the event that any term, covenant, condition, provision, or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision, or agreement shall in no way affect any other term, covenant, condition, provision, or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.9 Titles: The titles included in this AGREEMENT are for reference only and are not part of the terms of this AGREEMENT, nor do they in any way modify the terms of this AGREEMENT.

8.10 Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties as of the EFFECTIVE DATE.

8.11 Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the

noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three consecutive calendar days following deposit of the same in the United States mail.

**As to MANBAHAL:**

RICKEY S. MANBAHAL  
2434 West 230<sup>th</sup> Place  
Torrance, CA 90501

**As to the CITY:**

ARNOLD SHADBEHR  
City Manager  
4455 W. 126<sup>th</sup> Street  
Hawthorne, CA 90250

**WHEREFORE, the parties hereto have consulted with their respective attorneys, read all of the foregoing, understand the same, and agree to all of the provisions contained herein.**

DATED: 5/25/18

RICKEY S. MANBAHAL

By: 

RICKEY S. MANBAHAL

DATED: 5/25/18

CITY OF HAWTHORNE

By: 

ARNOLD SHADBEHR



# EXHIBIT A

## Promissory Note

**\$25,000.00**

**DATE: May 22, 2018**

The undersigned, Rickey S. Manbahal ("Maker"), promises to pay to the City of Hawthorne ("Holder"), or to such other party or parties as Holder may designate, the amount of \$25,000.00, which is the amount that he is required to repay to the Holder based on Maker's receipt and retention of a loan that he received from the Holder on November 3, 2014, in the amount of \$25,000 ("Repayment Amount") in accordance with the following provisions of this Promissory Note ("Note").

1. **Payments.** Maker agrees to make payments towards the balance of the Repayment Amount to Holder as follows:

A. **Periodic Payment Amounts.** Maker will make three monthly payments in the amount of \$8,333.00 to satisfy the outstanding Repayment Amount. The first payment shall be made no later than June 26, 2018; the second payment shall be made no later than July 26, 2018; and the final payment shall be made no later than August 26, 2018.

B. **Method of Payment.** Maker will provide payment by personal check to Holder.

C. **Payment Deadline.** Maker will provide complete payment in full no later than August 26, 2018.

2. **Prepayment.** Maker may prepay without penalty all or part of the outstanding balance of the Repayment Amount.

3. **Default; Accelerated Payment.** Upon Maker's failure to make any payment when due or to comply with any term required by the provisions of this Note, the entire unpaid balance of this Note will become due and payable at the option of Holder.

4. **Waiver; Attorney Fees.** Maker hereby waives presentment, and demand of this Note, and agrees to pay all costs of collection when incurred, including, without limitation, reasonable attorneys' fees, court costs and other costs reasonably incurred by Holder of this Note under such circumstances, whether or not suit is commenced for such purpose.

5. **Severability.** If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect.

6. **Modifications.** This Note may not be amended except by an instrument in writing and signed by the parties.

7. **Governing Law.** This Note will be construed according to and governed by the laws of the State of California.

The undersigned has executed this Note as of the date and year above written.

"Maker"

A handwritten signature in black ink, appearing to read 'R. Manbahal', written over a horizontal line.

RICKEY S. MANBAHAL